

THE HON'BLE MS JUSTICE G.ROHINI

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WRIT PETITION No.13196 of 2005

Dated 03-03-2006

Between:

B. Babul Reddy.

..... PETITIONER

AND

The Presiding Officer, Labour Court I, Hyderabad,
and twenty others.

.....RESPONDENTS

THE HON'BLE MS JUSTICE G.ROHINI

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WRIT PETITION No.13196 of 2005

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O R D E R:

This writ petition is filed seeking a Certiorari calling for the records in E.A.No.22 of 2005 in E.P.No.25 of 2003 on the file of the Labour Court I, Hyderabad.

It is not in dispute that in a dispute raised by the respondents 3 to 21 herein who are the workmen of the second respondent company with regard to their wages, an award was passed and for execution of the same, E.P.No.25 of 2003 was filed by them. It is also not in dispute that in pursuance of the same, the immoveable properties belonging to the second respondent company were sold on

16-10-2004 and the petitioner was the auction purchaser. While so the second respondent company filed E.A.No.22 of 2005 under Order XXI Rule 90 CPC seeking to set aside the auction sale conducted on

16-10-2004. The said application was ordered on 15-06-2005 recording that the second respondent company herein (petitioner therein) deposited a sum of Rs.3,86,065/- together with Rs.22,410/- i.e., a sum equal to 5% of purchase money and accordingly set aside the sale held on 16-10-2004. It was also observed that the petitioner herein-auction purchaser was entitled for refund of the purchase money together with five percent amount. The said order is under

challenge in this writ petition by the auction purchaser.

It is mainly contended by the petitioner that since earlier the second respondent company filed an application being E.A.No.49 of 2005 under Order XXI Rule 89 CPC seeing to set aside the sale and the same was dismissed by the Labour Court, the present E.A.No.22 of 2005 is barred by the principle of *res judicata*. It is also contended that the application-E.A.No.22 of 2005, which was filed beyond 60 days as prescribed under the statute, cannot be maintained.

At the outset it is to be noted that E.A.No.22 of 2005 was filed under Order XXI Rule 90 CPC but not under Order XXI Rule 89 CPC. Order XXI Rule 90 CPC provides for setting aside the sale on the ground of irregularity or fraud. In E.A.No.22 of 2005, the second respondent company (petitioner therein) made various allegations alleging that the sale held by the Commissioner on 16-10-2004 was not in accordance with the prescribed procedure and the same was vitiated on account of several irregularities. Strangely the Court below without issuing any notice to the auction purchaser and without recording any finding that the sale was vitiated on the ground of irregularities or fraud, set aside the sale merely recording the fact that the second respondent company (petitioner therein) has deposited the sum equal to 5% of purchase money. The said procedure adopted by the Court below is erroneous and not in accordance with the provisions of Order XXI Rule 90 CPC.

In the circumstances, I am not inclined to express any opinion with regard to the contentions raised by the petitioner and I deem it appropriate to set aside the order under challenge dated 15-06-2005 and to direct the Court below to consider E.A.No.22 of 2005 and pass appropriate orders afresh in accordance with law after affording due opportunity to the petitioner, the second respondent and the respondents 3 to 21 herein. It is made clear that it is open to the petitioner to raise all the objections available under law including that the petition is barred by the principle of *res judicata* before the Court below, in which event, the same shall be considered and appropriate

orders shall be passed in accordance with law. It is also made clear that it is open to the respondents 3 to 21 to make an application seeking permission to withdraw the amounts which are in deposit, in which event, the same shall be considered and appropriate orders be passed in accordance with law.

The writ petition is accordingly disposed of. No costs.

(G. ROHINI, J)

Date:03-03-2006

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